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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/821,415	03/28/2001	Yehiel Gotkis	LAM2P246	3672
25920	7590	04/04/2005	EXAMINER	
MARTINE PENILLA & GENCARELLA, LLP			VU, HUNG K	
710 LAKEWAY DRIVE			ART UNIT	
SUITE 200			PAPER NUMBER	
SUNNYVALE, CA 94085			2811	

DATE MAILED: 04/04/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

**Advisory Action  
Before the Filing of an Appeal Brief**

Application No.

09/821,415

Applicant(s)

GOTKIS ET AL.

Examiner

Hung Vu

Art Unit

2811

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 11 March 2005 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☐ The period for reply expires \_\_\_\_\_ months from the mailing date of the final rejection.  
b) ☒ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**NOTICE OF APPEAL**

2. ☐ The reply was filed after the date of filing a Notice of Appeal, but prior to the date of filing an appeal brief. The Notice of Appeal was filed on \_\_\_\_\_. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

**AMENDMENTS**

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because  
(a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);  
(b) ☐ They raise the issue of new matter (see NOTE below);  
(c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or  
(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: \_\_\_\_\_. (See 37 CFR 1.116 and 41.33(a)).

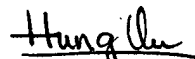
4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).  
5. ☐ Applicant's reply has overcome the following rejection(s): \_\_\_\_\_.  
6. ☒ Newly proposed or amended claim(s) 29 would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).  
7. ☐ For purposes of appeal, the proposed amendment(s): a) ☒ will not be entered, or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.  
The status of the claim(s) is (or will be) as follows:  
Claim(s) allowed: 6, 8, 26, 27, 29, 30 and 33.  
Claim(s) objected to: 35.  
Claim(s) rejected: 28, 31, 32 and 34.  
Claim(s) withdrawn from consideration: \_\_\_\_\_.

**AFFIDAVIT OR OTHER EVIDENCE**

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).  
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing of good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).  
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

**REQUEST FOR RECONSIDERATION/OTHER**

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:  
See Attachment.  
12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08 or PTO-1449) Paper No(s). \_\_\_\_\_.  
13. ☐ Other: \_\_\_\_\_.

  
Hung Vu  
Primary Examiner

***Response to Arguments***

It is argued, at page 6 of the Remarks, that by replacing the silicon oxide interlayer insulating material of Aoyagi with the porous dielectric material of Ahn and performing CMP operations, these operations can cause portions of the circuit to collapse or crack. This argument is not convincing because there are different techniques (grinding, etching back, etc.) can be used to form the conductive films and the interlayer insulating film having the surface planar with each other. Further, the arguments of counsel cannot take the place of evidence in the record. In re Schulze, 346 F.2d 600, 602, 145 USPQ 716, 718 (CCPA 1965); In re Geisler, 116 F.3d 1465, 43 USPQ2d 1362 (Fed. Cir. 1997) ("An assertion of what seems to follow from common experience is just attorney argument and not the kind of actual evidence that is required to rebut a prima facie case of obviousness."). See MPEP 716.01(c) for examples of attorney statements which are not evidence and which must be supported by an appropriate affidavit or declaration.

It is argued, at page 7 of the Remarks, that the insulating film 62 of Aoyagi is an interlayer insulating layer, not a passivation layer as claimed. This argument is not convincing because claims directed to apparatus must be distinguished from the prior art in terms of structure rather than function. In re Danley, 120 USPQ 528, 531 (CCPA 1959). "Apparatus claims cover what a device is, not what a device does ." (emphasis in original) Hewlett - Packard Co . v. Bausch & Lomb Inc., 15 USPQ2d 1525, 1528 (Fed. Cir. 1990). Note that the passivation layer and the interlayer insulation layer cover the transistor, therefore, it would not be corroded.

Attachment

It is argued, at page 7 of the Remarks, that by replacing the silicon oxide interlayer insulating material of Mochizuki with the porous dielectric material of Ahn and performing CMP operations, these operations can cause portions of the circuit to collapse or crack. This argument is not convincing because there are different techniques (grinding, etching back, etc.) can be used to form the conductive films and the interlayer insulating film having the surface planar with each other. Further, the arguments of counsel cannot take the place of evidence in the record.

It is argued, at pages 7 and 8 and the Remarks, that the combination of Mochizuki et al. and Ahn et al. would produce the capacitive delay that is less than the capacitive delay in Mochizuki et al.. This argument is not convincing because the insulating layer (18) is still the same, therefore, there is no changing in capacitive delay.